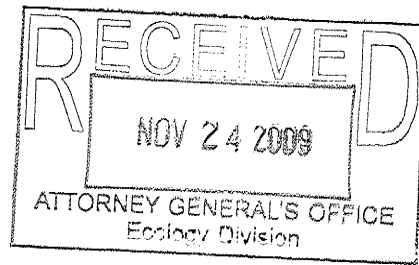


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POLLUTION CONTROL HEARINGS BOARD

STATE OF WASHINGTON

THE BOEING COMPANY,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 09-\_\_\_\_

**NOTICE OF APPEAL**

The Boeing Company hereby appeals the State of Washington Industrial Stormwater General Permit issued on October 21, 2009.

**I. Appealing Party**

**1.1 The Boeing Company:**

Gary C. Epperley  
Office of the General Counsel  
The Boeing Company  
P.O. Box 3707, MC 7A-XP  
Seattle, WA 98124-2207

**1.2 Representation:**

James A. Tupper, Jr.  
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**II. Identification of Parties**

2.1 The Boeing Company, Appellant.

2.2 State of Washington, Department of Ecology, Respondent.

**III. Copy of Permit**

3.1 See attached copy of the Industrial Stormwater General Permit ("ISGP") issued on October 21, 2009.

**IV. Grounds for Appeal**

4.1 The ISGP authorizes stormwater discharges associated with industrial activity. As issued, the Permit exceeds the statutory authority of the Department of Ecology, it is inconsistent with applicable provisions in federal and state water quality laws and regulations, and it imposes terms and conditions that are vague, excessive, unreasonable and potentially unachievable.

**V. Statement of Facts**

5.1 The Boeing Company ("Boeing") owns and operates several facilities in the state of Washington that are covered under the ISGP. Boeing representatives participated in advisory committee meetings during the development of the ISGP and submitted extensive comments on the draft ISGP.

5.2 The Permit relies extensively on vague terms and conditions that are likely to encourage abuse, misinterpretation, and selective enforcement. Sampling and reporting requirements are unreasonably restrictive and onerous to implement. The Permit's corrective action requirements are confusing, and fail to provide meaningful direction to permittees seeking to demonstrate and maintain compliance with the Permit terms and conditions.

5.3 The ISGP imposes vague, excessive and unreasonable requirements for transportation facilities to obtain coverage under the Permit. The Permit benchmarks for copper, zinc, and turbidity are excessive, unreasonable and potentially unachievable. The benchmarks far exceed values that are necessary or justified to protect receiving water quality.

1           5.4     The Permit numeric effluent limits applicable to discharges to Section 303(d)  
2 listed water body segments are not appropriately derived numeric water quality based effluent  
3 limitations as required under RCW 90.58.555.

4           5.5     The Permit imposes effluent limits regulating discharges to Section 303(d) water  
5 body segments for parameters such as fecal coliform that are not generally associated with  
6 industrial stormwater discharges. The effluent limitations for these parameters are excessive,  
7 unreasonable and potentially unachievable.

8           5.6     The Permit contains numeric effluent limits regulating discharges to Section  
9 303(d) water body segments for TSS as a surrogate for sediment contamination that is not  
10 scientifically justified. The numeric effluent limits for TSS are excessive, unreasonable and  
11 potentially unachievable.

12           5.7     The ISGP imposes vague, excessive, unreasonable and potentially unachievable  
13 requirements for compliance with "AKART" ("All Known, Available, and Reasonable  
14 Technology") and eligibility for other permit conditions such as mixing zones.

15           5.8     The ISGP imposes vague, excessive and unreasonable compliance requirements  
16 for visual inspections.

17           5.9     The ISGP imposes vague, excessive and unreasonable compliance requirements  
18 for monitoring.

19           5.10    The ISGP imposes vague, excessive and unreasonable requirements for  
20 compliance with corrective action requirements in the prior ISGP.

21           5.11    The ISGP imposes vague, excessive and unreasonable requirements for  
22 identifying and implementing stormwater treatment best management practices ("BMPs").

23           5.12    The ISGP contains vague, excessive, unreasonable and potentially unachievable  
24 criteria for seeking waivers of Permit corrective action requirements when corrective actions are  
25 not economically or technically feasible, or not necessary to prevent discharges that may cause  
26 or contribute to violation of a water quality standard.

5.13 The ISGP is not consistent with the requirements for general industrial stormwater permits under RCW 90.58.555.

5.14 The ISGP is not consistent with the regulations and procedural requirements for issuing a NPDES and general permit including chapters 173-201A, 173-204, 173-220 and 173-226 WAC.

## VI. Relief Sought

Wherefore, The Boeing Company respectfully request the Board grant the following relief:

1. An order directing the Department of Ecology to modify the Industrial Stormwater General Permit to address the permit deficiencies set forth above.
2. Such further relief the Board deems appropriate under the circumstances of this case.

DATED this 20th day of November, 2009.

TUPPER MACK BROWER PLLC

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Attorneys for Appellant  
The Boeing Company

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this date I caused the foregoing document to be served on the following persons via the methods and dates indicated:

The Department of Ecology  
Appeals Coordinator  
Maylee Collier  
300 Desmond Drive  
Lacey, WA 98503

- ☐ Overnight Delivery via Fed Ex  
☒ First Class Mail via USPS  
☐ Hand-Delivered via ABC Legal Messenger  
☐ Facsimile  
☐ E-mail

Mary Sue Wilson  
Senior Assistant Attorney General  
Office of the Attorney General  
Ecology Division  
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The Pollution Control Hearings Board  
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Southwest Regional Office  
300 Desmond Drive SE  
Lacey, WA 98503

- ☐ Overnight Delivery via Fed Ex  
☒ First Class Mail via USPS  
☐ Hand-Delivered via ABC Legal Messenger  
☐ Facsimile  
☐ E-mail

Dated at Seattle, Washington, this 20<sup>th</sup> day of November, 2009.

  
Courtney Straight, Legal Assistant